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Before the
Federal Communications Commission
Washington, DC 20554

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In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments)
FM Broadcast Stations)
(Bridgeton and Pennsauken, New Jersey))

FEB 10 2003

MB Docket No. 02-382
RM-10615
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Assistant Chief, Audio Division
Media Bureau

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COMMENTS

Cohanzick Broadcasting Corporation ("Cohanzick"), licensee of Station WSNJ-FM, Bridgeton, New Jersey, and New Jersey Radio Partners, L.L.C. ("New Jersey Radio"), assignee of WSNJ-FM (together, "Joint Parties"), by their respective counsel, hereby submit their comments in the above-captioned proceeding. The Joint Parties propose to substitute Channel 300A for Channel 299B at Bridgeton, New Jersey, reallocate Channel 300A from Bridgeton to Pennsauken, New Jersey, as the community's first local transmission service, and modify the license for Station WSNJ-FM to reflect the changes. One individual, David Brouda ("Brouda"), filed comments prior to the comment deadline objecting to the proposal on the ground that it would adversely affect a Class D station and two FM translators.¹

I. Bronda's Objection is Without Merit Because Loss of Secondary Service Is Not Considered in Allotment Proceedings.

1. FM Translator W300AD, Philadelphia, Pennsylvania, FM Translator W300AA, Levittown, Pennsylvania, and Class D Noncommercial Educational (NCE) Station WHHS, Havertown, Pennsylvania, all operate on Channel 300. The Joint Parties' proposal for Channel 300A at Pennsauken would likely interfere with these facilities. Brouda acknowledges that these three services must accept interference from primary service stations, but states that the

¹ The Joint Parties intend to file Reply Comments if any other Comments are filed by the due date.

Commission should consider, as a public interest factor, the loss of these three services. However, these concerns are premature at the allotment stage. When and if an application is filed for Channel 300A at Pennsauken, actual interference may become an issue ripe for consideration. Even so, all three of these facilities are secondary services, and are not protected by Commission rules against interference from primary services.’

2. With respect to FM translators Stations W300AD and W300AA, the potential interference to translators simply is not considered in allotment proceedings. *Willows and Dunnigan, California*, 15 FCC Rcd 23852, 23856-57 (2000). Consistent with this policy, the Commission’s translator rules are based on *actual* interference, not potential interference. Thus, the Commission’s rules do not permit an FM translator to operate if it “causes any actual interference to [t]he direct reception by the public of the off-the-air signals of any authorized broadcast station.” Accordingly, any issue with respect to the operation of W300AA and W300AD will not be ripe unless and until actual interference is caused. *See Kingston, New York*, 17 FCC Rcd 14326 (2002) (interference to secondary services is not a proper consideration at allotment stage). If actual interference is caused, the rules make clear that it is the translator that must cease operations. *See* Section 74.1203 of the Commission’s Rules.

3. With respect to WHHS, Class D NCE stations are also not entitled to protection from full service FM stations. *See Brighton, New York*, 8 FCC Rcd 793, 794 (1993); *Sanford, North Carolina*, 10 FCC Rcd 9266 (1995) (Notice of Proposed Rule Making). Accordingly, proposals for full service allotments need not consider spacing distances to Class D stations. As with the translator rules, the rules applicable to Class D stations are based on actual interference, not

² *Amendment of the Commission’s Rules Concerning FM Translator Stations*, 5 FCC Rcd 7212,7219 (1990); *Creation of a Low Power Radio Service*, 14 FCC Rcd 2471,2481 n.37 (1999).

³ 47 C.F.R. § 74.1203.

potential interference, and make clear that the Class D station must give way when actual interference is caused.⁴

4. Brouda acknowledges that translators and Class D stations are not entitled to interference protection from full service stations. Nevertheless, he argues that WHHS provides a valuable and irreplaceable service, serving as a community and School District media outlet and providing broadcast and mass media training to high school students. However, to the extent these are programming considerations, they cannot be considered in an allotment context. For many years it has been FCC policy not to intervene in licensees' choices of programming formats. *See Changes in the Entertainment Formats of Broadcast Stations*, 60 F.C.C.2d 858 (1976). Instead, the Commission has determined that the public interest is best served when market forces and competition between broadcasters are allowed to affect programming diversity, and this determination has been upheld by the Supreme Court. *FCC v. WNCN Listener's Guild*, 450 U.S. 582, 585 (1981). Recently, the Commission declined to revisit this policy even when unique foreign language and ethnic informational programming were threatened. *Multicultural Radio Broadcasting, Inc.*, 15 FCC Rcd 20630 (2000). Therefore, the programming presented by WHHS cannot receive protection under the Commission's longstanding rules and policies.

5. In summary, Brouda has not cited any case in which the Commission has afforded protection to secondary services such as FM translators or Class D NCE stations, or even considered their potential loss as a public interest factor. Indeed, as shown above, the Commission has refused to consider the impact on secondary services in making full-service allotments. Thus, to give consideration to these arguments here would be inconsistent with Commission Rules, reverse existing precedent, and erode the public interest in the preservation and expansion of primary broadcast service to the public.

⁴ See 47 C.F.R. § 73.512(d).
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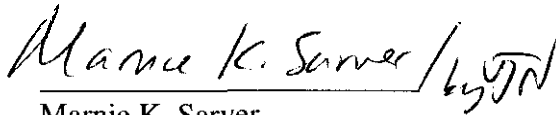
II. Conclusion and Statement of Continuing Interest

6. The Joint Parties hereby state their continuing interest in applying for Channel 300A at Pennsauken, New Jersey. If this allotment is granted, the Joint Parties will file an application for Channel 300A at Pennsauken, and will promptly construct the facilities if the application is granted. For the reasons set forth herein, the Commission should deny Brouda's objection to the Joint Parties' proposal. The Joint Parties reserve the right to comment on the merits of any other filings accepted by the Commission by the comment deadline.

Respectfully submitted,

COHANZICK BROADCASTING
CORPORATION

By:

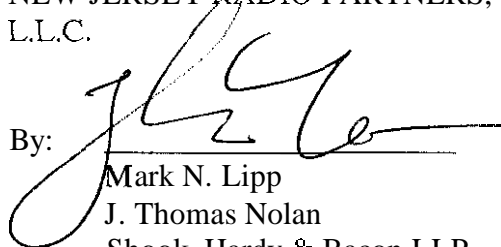


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February 10, 2003

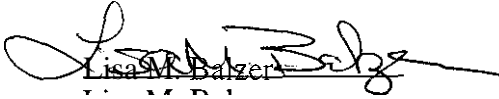
CERTIFICATE OF SERVICE

I, Lisa M. Balzer, a secretary in the law firm of Shook, Hardy and Bacon, do hereby certify that I have on this 10th day of February, 2003 caused to be mailed by first class mail, postage prepaid, copies of the foregoing **“Comments”** to the following:

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